

## EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2007-0943-PST-E TCEQ ID: RN102263332 CASE NO.: 33803  
 RESPONDENT NAME: RUTH ANN SMITH DBA SMITHS HARDWARE & MORE

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 4783 Farm-to-Market 10, Gary, Panola County

**TYPE OF OPERATION:** Convenience store with retail sales of gasoline

**SMALL BUSINESS:** ☒ Yes ☐ No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired August 10, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Tracy Chandler, Litigation Division, MC 175, (512) 239-0629  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. Jorge Ibarra, Air Enforcement Section, MC R-4, (817) 588-5890

**TCEQ Regional Contact:** Mr. Mike Brashear, Tyler Regional Office, MC R-5, (903) 535-5176

**Respondent:** Ms. Ruth Ann Smith, Owner, Smiths Hardware & More, 4783 Farm-to-Market Road 10, Gary, TX 75643

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint</p> <p><input type="checkbox"/> Routine</p> <p><input type="checkbox"/> Enforcement Follow-up</p> <p><input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> May 10, 2007</p> <p><b>Date of NOE Relating to this Case:</b> May 24, 2007</p> <p><b>Background Facts:</b> The case was referred to the Litigation Division on January 22, 2008. The EDPRP was filed April 2, 2008. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the Agreed Order was signed on June 8, 2009.</p> <p><b>Current Compliance Status:</b> Not yet in compliance. The Respondent's delivery certificate expires in August 2009.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to report a suspected release to the agency within 24 hours of discovery [30 TEX. ADMIN. CODE § 334.72].</li> <li>Failed to investigate a suspected release within 30 days of discovery [30 TEX. ADMIN. CODE § 334.74].</li> <li>Failed to maintain UST records and immediately make available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].</li> </ol>	<p><b>*Total Assessed:</b> \$22,000</p> <p><b>Total Deferred:</b> \$20,800</p> <p><input type="checkbox"/> Expedited Order</p> <p><input checked="" type="checkbox"/> Financial Inability to Pay</p> <p><input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b> \$100/\$1,100</p> <p>The Respondent paid \$100 of the administrative penalty. The remaining amount of \$1,100 shall be payable in 11 monthly payments of \$100 each.</p> <p><b>Site Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>*Explanation of Initial Calculated Penalty Reduction:</b> The penalty was reduced in consideration of financial inability to pay.</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately, begin maintaining all UST records.</li> <li>Within 30 days, establish and implement a process for reporting a suspected release.</li> <li>Within 60 days, begin an investigation of the suspected release and implement appropriate corrective measures, if required.</li> <li>Within 75 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	29-May-2007	<b>Screening</b>	5-Jun-2007	<b>EPA Due</b>	
	<b>PCW</b>	20-Jan-2008				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Ruth Ann Smith dba Smiths Hardware & More		
<b>Reg. Ent. Ref. No.</b>	RN102263332		
<b>Facility/Site Region</b>	5-Tyler	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	33803	<b>No. of Violations</b>	3	
<b>Docket No.</b>	2007-0943-PST-E	<b>Order Type</b>	1660	
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	Shontay Wilcher	
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 6	
<b>Admin. Penalty \$</b>	Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$22,000

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 0% Enhancement **Subtotals 2, 3, & 7** \$0

**Notes** No adjustment for compliance history.

**Culpability** No 0% Enhancement **Subtotal 4** \$0

**Notes** The respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** 0% Reduction **Subtotal 5** \$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	
N/A	X (mark with x)

**Notes** The respondent does not meet the good faith criteria.

**Total EB Amounts** \$149 **0% Enhancement\*** **Subtotal 6** \$0  
**Approx. Cost of Compliance** \$1,650 *\*Capped at the Total EB \$ Amount*

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$22,000

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

**Notes**

**Final Penalty Amount** \$22,000

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$22,000

**DEFERRAL** 0% Reduction **Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes** Deferral not offered for non-expedited settlement

**PAYABLE PENALTY** \$22,000

Screening Date 5-Jun-2007

Docket No. 2007-0943-PST-E

PCW

Respondent Ruth Ann Smith dba Smiths Hardware &amp; More

Policy Revision 2 (September 2002)

Case ID No. 33803

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN102263332

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

<b>Screening Date</b> 5-Jun-2007		<b>Docket No.</b> 2007-0943-PST-E		<b>PCW</b>
<b>Respondent</b> Ruth Ann Smith dba Smiths Hardware & More				<small>Policy Revision 2 (September 2002)</small>
<b>Case ID No.</b> 33803				<small>PCW Revision May 25, 2007</small>
<b>Reg. Ent. Reference No.</b> RN102263332				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Shontay Wilcher				
<b>Violation Number</b>		<input type="text" value="1"/>		
<b>Rule Cite(s)</b>		<input type="text" value="30 Tex. Admin. Code § 334.72"/>		
<b>Violation Description</b>		<p>Failed to report a suspected release to the agency within 24 hours of discovery. Specifically, the Statistical Inventory Reconciliation ("SIR") results for September 2006 indicated a suspected release that was not reported to the TCEQ.</p>		
<b>Base Penalty</b>				<input type="text" value="\$10,000"/>
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Harm</b>			
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
				<b>Percent</b> <input type="text" value="0%"/>
<b>&gt;&gt; Programmatic Matrix</b>				
Matrix Notes	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>
				<b>Percent</b> <input type="text" value="10%"/>
<b>Matrix Notes</b>				<input type="text" value="100% of the rule requirement was not met."/>
<b>Adjustment</b>				<input type="text" value="\$9,000"/>
				<input type="text" value="\$1,000"/>
<b>Violation Events</b>				
<b>Number of Violation Events</b>		<input type="text" value="1"/>	<b>Number of violation days</b> <input type="text" value="1"/>	
<small>mark only one with an x</small>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="text" value="x"/>		
One single event is recommended based documentation of the violation during the May 10, 2007 record review.				
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b>		<input type="text" value="\$50"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,000"/>	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				<input type="text" value="\$1,000"/>

**Economic Benefit Worksheet**

Respondent Ruth Ann Smith dba Smiths Hardware &amp; More

Case ID No. 33803

Reg. Ent. Reference No. RN102263332

Media Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$50	1-Oct-2006	2-Oct-2006	0.0	\$0	\$50	\$50

Notes for AVOIDED costs

Estimated cost to report a suspected release. The Date Required is the date of the suspected release. The Final Date is the date the report was due.

Approx. Cost of Compliance

\$50

TOTAL

\$50

Screening Date 5-Jun-2007

Docket No. 2007-0943-PST-E

PCW

Respondent Ruth Ann Smith dba Smiths Hardware &amp; More

Policy Revision 2 (September 2002)

Case ID No. 33803

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN102263332

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.74

Violation Description

Failed to investigate a suspected release within 30 days of discovery. Specifically, SIR results for September 2006 indicated a suspected release that was not investigated.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification			
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 8

217 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$20,000

Eight monthly events are recommended from the release investigation due date of October 31, 2006 to the June 5, 2007 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$96

Violation Final Penalty Total \$20,000

This violation Final Assessed Penalty (adjusted for limits) \$20,000

**Economic Benefit Worksheet****Respondent** Ruth Ann Smith dba Smiths Hardware & More**Case ID No.** 33803**Reg. Ent. Reference No.** RN102263332**Media** Petroleum Storage Tank**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$1,500	31-Oct-2006	10-Feb-2008	1.3	\$96	n/a	\$96
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to investigate a suspected release. The Date Required is the date the release investigation was due and the Final Date is the estimated date of compliance.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance**

\$1,500

**TOTAL**

\$96



<b>Screening Date</b> 5-Jun-2007		<b>Docket No.</b> 2007-0943-PST-E		<b>PCW</b>
<b>Respondent</b> Ruth Ann Smith dba Smiths Hardware & More		<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 33803		<i>PCW Revision May 25, 2007</i>		
<b>Reg. Ent. Reference No.</b> RN102263332				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Shontay Wilcher				
<b>Violation Number</b>		<input type="text" value="3"/>		
<b>Rule Cite(s)</b>		<input type="text" value="30 Tex. Admin. Code § 334.10(b)"/>		
<b>Violation Description</b>		<input type="text" value="Failed to maintain UST records and immediately make available for inspection upon request by agency personnel."/>		
<b>Base Penalty</b>				<input type="text" value="\$10,000"/>

  

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>		<b>Harm</b>				
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>		
	<b>Actual</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>		
	<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b>	<input type="text" value="0%"/>

  

**>> Programmatic Matrix**

	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	
<b>Percent</b>	<input type="text" value="10%"/>				

  

**Matrix Notes**

100% of the rule requirement was not met.

  

**Adjustment**

  

**Violation Events**

Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="26"/>	Number of violation days
----------------------------	--------------------------------	---------------------------------	--------------------------

  

<i>mark only one with an x</i>	daily	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input checked="" type="checkbox"/>	

  

**Violation Base Penalty**

  

One single event is recommended based on the documentation of the violation during the May 10, 2007 record review date.

  

<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
Estimated EB Amount	<input type="text" value="\$3"/>	Violation Final Penalty Total	<input type="text" value="\$1,000"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$1,000"/>	

**Economic Benefit Worksheet****Respondent** Ruth Ann Smith dba Smiths Hardware & More**Case ID No.** 33803**Reg. Ent. Reference No.** RN102263332**Media** Petroleum Storage Tank**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$100	10-May-2007	10-Dec-2007	0.6	\$3	n/a	\$3
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to maintain UST records. The Date Required is the date of the record review and the Final Date is the estimated date of compliance.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance**

\$100

**TOTAL**

\$3

# Compliance History

Customer/Respondent/Owner-Operator:	CN601204555	SMITH, RUTH ANN	Classification: AVERAGE BY DEFAULT	Rating: 3.01
Regulated Entity:	RN102263332	SMITHS HARDWARE & MORE	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	61851	
Location:	4783 FM 10, GARY, TX, 75643	Rating Date: 9/1/2006	Repeat Violator: NO	
TCEQ Region:	REGION 05 - TYLER			
Date Compliance History Prepared:	June 20, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 20, 2002 to June 20, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Shontay Wilcher Phone: (512) 239-2136

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 05/24/2007 (540077)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
RUTH ANN SMITH DBA SMITHS  
HARDWARE & MORE  
RN102263332

§  
§  
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§  
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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2007-0943-PST-E

### I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Ruth Ann Smith dba Smiths Hardware & More ("Ms. Smith") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Ms. Smith appear before the Commission and together stipulate that:

1. Ms. Smith owns and operates a convenience store with retail sales of gasoline at 4783 Farm-to-Market Road 10, Gary, Panola County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Ms. Smith agree that the Commission has jurisdiction to enter this Agreed Order, and that Ms. Smith is subject to the Commission's jurisdiction.
4. Ms. Smith received notice of the violations alleged in Section II ("Allegations") on or about May 29, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Ms. Smith of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of twenty-two thousand dollars (\$22,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by Ms. Smith and determined that Ms. Smith is unable to pay part of the administrative penalty. Therefore, twenty thousand eight hundred dollars (\$20,800.00) of the penalty is deferred contingent upon Ms. Smith's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Ms. Smith fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Ms. Smith to pay all or part of the deferred penalty.

Ms. Smith paid one hundred dollars (\$100.00) of the undeferred administrative penalty. The remaining amount of one thousand one hundred dollars (\$1,100.00) shall be payable in 11 monthly payments of one hundred dollars (\$100.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Ms. Smith fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the acceleration of any remaining balance constitutes the failure by Ms. Smith to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of any deferred penalty amount.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Ms. Smith agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Ms. Smith has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

1. During a record review conducted on May 10, 2007, a Tyler Regional Office investigator documented that Ms. Smith violated:
  - a. 30 TEX. ADMIN. CODE § 334.72 by failing to report a suspected release to the agency within 24 hours of discovery. Specifically, the Statistical Inventory Reconciliation ("SIR") results for September 2006 indicated a suspected release that was not reported to the TCEQ.
  - b. 30 TEX. ADMIN. CODE § 334.74 by failing to investigate a suspected release within 30 days of discovery. Specifically, SIR results for September 2006 indicated a suspected release that was not investigated.
  - c. 30 TEX. ADMIN. CODE § 334.10(b) by failing to maintain UST records and immediately make available for inspection upon request by agency personnel.

## III. DENIALS

Ms. Smith generally denies each allegation in Section II ("Allegations").

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Ms. Smith pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Ms. Smith's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Ruth Ann Smith dba Smiths Hardware & More, Docket No. 2007-0943-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Ms. Smith shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, Ms. Smith shall begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10.
  - b. Within 30 days after the effective date of this Agreed Order, Ms. Smith shall establish and implement a process for reporting a suspected release, in accordance with 30 TEX. ADMIN. CODE § 334.72.
  - c. Within 60 days after the effective date of this Agreed Order, Ms. Smith shall begin an investigation of the suspected release and implement appropriate corrective measures if required, in accordance with 30 TEX. ADMIN. CODE § 334.74.
  - d. Within 75 days after the effective date of this Agreed Order, Ms. Smith shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Ms. Smith shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c. to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Mike Brashear, Waste Section Manager  
Texas Commission on Environmental Quality  
Tyler Regional Office  
2916 Teague Drive  
Tyler, Texas 75701-3734

3. The provisions of this Agreed Order shall apply to and be binding upon Ms. Smith. Ms. Smith is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Ms. Smith fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Ms. Smith's failure to comply is not a violation of this Agreed Order. Ms. Smith shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Ms. Smith shall notify the Executive Director within seven days after Ms. Smith becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Ms. Smith shall be made in writing to the Executive Director. Extensions are not effective until Ms. Smith receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Ms. Smith in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be



transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Ms. Smith, or three days after the date on which the Commission mails notice of the Order to Ms. Smith, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

RECEIVED  
JUN 10 2009  
ENFORCEMENT DIVISION

\_\_\_\_\_  
For the Commission

*[Signature]*

For the Executive Director

7/10/2009  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Ms. Smith's compliance history;
- Greater scrutiny of any permit applications submitted by Ms. Smith;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Ms. Smith;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Ms. Smith; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*Ruth Ann Smith*  
Signature

6-8-09  
Date

Ruth Ann Smith  
Name (Printed or typed)

Owner  
Title

Authorized representative of Ruth Ann Smith dba  
Smiths Hardware & More